

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

IN RE: NEW ENGLAND  
COMPOUNDING PHARMACY, INC.  
PRODUCTS LIABILITY LITIGATION

MDL No. 2419  
Dkt. No. 1:13-md-2419 (RWZ)

THIS DOCUMENT RELATES TO:

All Actions

**MOTION FOR CLARIFICATION**

Plaintiffs respectfully request clarification as to certain aspects of the Order Regarding Common Issue Discovery [Dkt. 1425] issued by Judge Boal on September 18, 2014. Plaintiffs recognize that this need for clarification now is the direct and regrettable result of ambiguities in the parties' own submissions to the Court.

In response to the Court's Order, the Plaintiffs' Steering Committee ("PSC") sent a copy of the Order to all known Plaintiffs' counsel with instructions that each plaintiff in the MDL must complete and serve a PPF and medical authorizations by November 17, 2014. The PSC held a call to answer plaintiffs' counsel's questions about the PPF, medical authorizations, and the Order generally. As part of that process, several questions were raised that suggest some clarification of the Order may be appropriate.

First, the Order provides that "the Parties will serve initial disclosures ... regarding Common Issues within 30 days" of the entry of the Order, and that "Plaintiffs shall serve completed Plaintiff Profile Forms ("PPF") and medical authorizations within 60 days" after

the entry of the Order. Order at 3, 4. However, there are plaintiffs in the MDL with individual cases that only have claims against defendants that have either settled, are presently mediating, or are otherwise actively trying to resolve the claims against them.

For ease of reference, those defendants are: New England Compounding Pharmacy, Inc.; Barry J. Cadden; Gregory Conigliaro; Lisa Conigliaro Cadden; Douglas Conigliaro; Carla Conigliaro; Ameridose, LLC; Medical Sales Management, Inc.; Medical Sales Management SW, Inc.; GDC Properties Management, LLC; ARL Bio Pharma Inc. d/b/a Analytical Research Laboratories; Liberty Industries, Inc.; UniFirst Corporation; Victory Mechanical Service and Victory Heating & Air Conditioning Co., Inc.; Insight Imaging (VA); Michigan Pain Specialists (MI); High Point Surgery (NC); and Inspira Medical Centers, Inc. and Inspira Health Network, Inc. (NJ).

Plaintiffs respectfully request clarification as to whether plaintiffs whose complaints on file in the MDL name only the parties listed above as defendants must still complete and serve their Initial Disclosures and PPFs within the timeframe prescribed by the Order. Those cases may well be resolved in the near term.

Plaintiffs suggest that any plaintiff whose complaint on file in the MDL names only the parties listed above as defendants be permitted to postpone completing Initial Disclosures and PPFs until such time as any defendant named in that plaintiff's complaint files a notice of withdrawal from the mediation program, or otherwise notifies the PSC in writing that it is returning to active litigation against Plaintiffs. Should that occur, Plaintiffs would then have 30 days from the date of that defendant's notice to complete and serve

Initial Disclosures on that defendant, and 60 days from the date of notice to complete and serve their PPFs on that defendant.

To be clear, the PSC has instructed all plaintiffs' counsel to prepare PPFs and releases for all plaintiffs by the November 17, 2014, deadline. The PSC understands that work is in progress.

Second, the language of the Order appears to contemplate that each individual plaintiff will file his or her own Initial Disclosures. Although it was not clear from the parties' submissions to the Court, during discovery negotiations the Parties were contemplating one set of Master Initial Disclosures to be served on each defendant on behalf of all MDL plaintiffs with claims against that defendant. Thus Plaintiffs respectfully request that the Order be clarified to reflect this, by striking the sentence on page 3 of the Order that reads: "Plaintiffs added to this case after the entry of this Order shall serve their initial disclosures within 30 days after joining the MDL."

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Third, it is unclear from the language of the Order whether the limits set forth for Master Common Written Discovery (i.e. 50 Requests for Admission, 40 Interrogatories, and two separate sets of Requests for Production limited to a total of 100 requests) are limits on the number of requests a party can make on any one other party, or limits on the number of requests a party can make *in total* in the MDL. While plaintiffs believe a logical reading of the provision, given the number of defendants in the MDL, is that those limits apply *per defendant*, we seek clarification out of an abundance of caution. Thus Plaintiffs respectfully request that the Order be clarified to state that the limits pertain to the number of requests any one party may serve on any one other party.

Dated: October 8, 2014

Respectfully submitted,



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*Plaintiffs' Steering Committee*

**CERTIFICATE OF SERVICE**

I, Annika K. Martin, hereby certify that I caused a copy of the foregoing to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system.

Dated: October 8, 2014

A handwritten signature in black ink, appearing to read 'Annika K. Martin', written in a cursive style.

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Annika K. Martin